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## FISCAL IMPACT REPORT

ORIGINAL DATE 2-16-2007

SPONSOR Garcia, M.H. LAST UPDATED \_\_\_\_\_ HB 485

SHORT TITLE Temporary School District Administration SB \_\_\_\_\_

ANALYST Dearing

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	*NFI		
	*Please see narrative		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)  
Public Education Department (PED)

### SUMMARY

#### Synopsis of Bill

House Bill 485 carries no appropriation. If enacted, House Bill 485 would create significantly altered protocol and rules for School Board-Superintendent relationships in school districts with enrollment in excess of 10,000 students.

### FISCAL IMPLICATIONS

\*No fiscal impact

### SIGNIFICANT ISSUES

House Bill 485 amends or inserts material in Sections 22-5-4 and 22-5-14 NMSA 1978 such that additional powers over the district Superintendent are extended to the local school Board in districts where enrollment exceeds 10,000.

The bill broadens the Board's power to include provision of oversight and authorization over the Superintendent. Under a Board vote of no confidence, the amended statute would allow the

Board to suspend the Superintendent, subsequently installing the Board into a temporary position of administrative oversight of the district.

As amended, House Bill 485 adds clauses to Section 22-5-14 (b) 3 and (d) that effectively removes autonomy of management and administration from the Superintendent. The first removes the Superintendent's discretion to hire, fire, and alter compensation or assignment for school administrators, adding a review and approval process by the Board. The second allows for a censure of the Superintendent's power in the case of a no confidence vote by the Board.

According to the Public Education Department, relevant issues follow:

1. According to the Frequently Asked Questions in the *Robert's Rules of Order Newly Revised* (1970 ed.), "A vote of no confidence does not remove an officer from office."
2. Page 3, Lines 16 – 17, the use of "when appropriate" is ambiguous and subjective.
3. Section 22-10A-21, already requires all school district administrators to be employed under a contract form prescribed in rules for the PED, for a term to be at least one year in duration but can be granted for up to three years.
4. Given that superintendents are and must be under a contract, enactment of this bill may be considered an unconstitutional impairment of contracts by the Legislature in violation of Article 2, section 19, of the New Mexico Constitution.<sup>1</sup>
5. The bill would take the extreme measure of permitting the summary removal of a superintendent and the suspension of his/her authority on the basis of a vote of no confidence. However, districts already possess remedial authority to correct a superintendent's performance. A local school board by law and by contract, as the employer of a superintendent, can impose progressive discipline, corrective actions and in justified situations can discharge a superintendent.
6. The PED has rules in effect that govern performance supervision of a superintendent.<sup>2</sup>
7. Section 22-10A-30 NMSA 1978 governs the procedures to be followed by school districts in supervising and correcting unsatisfactory work performance of certified school personnel before a notice of intent to discharge is served upon them
8. The thrust of this bill of permitting a local board to override a superintendent's employment decision appears to be in direct contradiction with what the Legislature intended to accomplish by enacting House Bill 212, *Public School Reforms*, 46<sup>th</sup> Legislature, Laws of 2003, Chapter 153.

## **TECHNICAL ISSUES**

The bill does not provide for any due process procedures. Nor does it define "temporary" as it relates to school board administration of a school district when it suspends the superintendent.

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<sup>1</sup> Laws cannot be enacted precluding contract performance.

<sup>2</sup> PED rule 6.69.3 New Mexico Administrative Code.

The bill does not grant a local school board the right to appoint an acting superintendent when it suspends the superintendent. The bill appears to contemplate board involvement in day-to-day administration of the school district in that situation.

**ALTERNATIVES**

Shorten the contract duration for districts with recurring management issues regarding district Superintendents.

**POSSIBLE QUESTIONS**

Why are these provisions limited to only those districts with enrollment in excess of 10,000?

PD/mt